

FILED
Dec 6
District Court

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For The Northrop Marian Islands
By George Clark

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

STEVEN PARKS,

) CIVIL ACTION NO. 04-0013

Plaintiff,

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VS.

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EDWARD CAMACHO, in his official and personal capacities; DEPARTMENT OF PUBLIC SAFETY, ELIAS SARALU, and DOES 1-10.

) DEFENDANTS' MOTION FOR
) RECONSIDERATION AND/OR
) TO ALTER OR AMEND AWARD
) OF ATTORNEY'S FEES AND COSTS

Defendants.

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COMES NOW ALL DEFENDANTS in the above styled and numbered cause, who/which would present to the Court this Motion to Alter or Amend the Award of Attorney's Fees and Costs entered by the Court on September 1,2005.

As grounds for the Motion, Defendants would show the Court the following:

I. The Motion should be Reargued

The Court should vacate the Order of September 1, 2005 and order the Motion for Attorney Fees reargued. Due to a typhoon and unavoidable equipment malfunction, Defendants' attorney did not attend the hearing on the Motion for Attorney's Fees. Such non-attendance at the hearing was completely inadvertent and Defendants should be allowed their day in Court as to this matter. See Declaration of David Lochabay, attached.

II. Plaintiff Agreed to Accept Less than the Court Awarded

In Plaintiff's Reply to Defendant's Opposition to Motion for Attorney Fees, at p. 8, ll 25-28, and p. 9, ll 1-4, Plaintiff states:

“Counsel’s hourly fee is customarily \$240.00. Plaintiff has submitted

two affidavit (sic) stating this is generally reasonable. The government refers to Ms. Rayphand's hourly rate of \$175.00 as reasonable. Mr. Parks notes that Ms. Rayphand, on behalf of NMPASI, refused to take Mr. Parks case. Nonetheless, if the Court wishes to adopt an hourly rate of \$175.00 for Plaintiff's primary counsel (Mr. Banes), Mr. Parks will not object. Similarly, if the Court wished to reduce Mr. Bozman's fees to \$150.00 as he has less experience and Mr. Ouslander's and Ms. Chang's fees to \$125.00 and Ms. Sabangan to \$100.00, that would be acceptable as well."

Plaintiff having agreed that the above reduced rates are fair and reasonable, the Court should have awarded attorney's fees based on the reduced, reasonable rates.

Attorney's Fees at those rates would be:

Attorney Robert O'Connor, 1.15 hrs. @ \$280 per hr. . . . \$322.00

Attorney David Banes, 50.6 hrs. @ \$175 per hr. \$8,855.00

Attorney Joseph Horey, 1.0 hrs. @ \$175 per hr. \$175.00

Attorney Eric Bozman, 39.92 hrs. @ \$150 per hr. \$5,988.00

Law clerk Catherine Chang-Sanders, 9.2 hrs. @ \$125 . . \$1,150.00

Paralegal Auralou Sabangan, 9.75 hrs. @ \$100 per hr. . . \$975.00

Law Clerk Jacob Ouslander, 29.35 hrs. @ \$125 per hr. \$3,668.75

Total Fees. \$21,133.75

The Court had also awarded costs in the amount of \$167.31, with which Defendant does not quarrel. The total award of fees and costs then, would be \$21,301.06.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court grant this Motion, vacate the Order of September 1, 2005, and order the Motion reargued.

In the alternative and without waiving the foregoing, Defendants pray that the Court reduce the amount of fees awarded as shown above.

Respectfully submitted,

David Lochabay, Bar No. F030,
Asst. Attorney General
Office of the Attorney General
Attorneys for Defendants

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2 CERTIFICATE OF SERVICE
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4 I hereby certify that a true and correct copy of the above and foregoing has been hand delivered
5 to the offices of Mr. David Banes, Esq., O'Connor Berman Dotts & Banes, attorneys for Plaintiff, at 2nd
6 Floor, Nauru Bldg., P. O. Box 501969, Susupe, Saipan, MP 96950, this 12th day of September, 2005.
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**IN THE UNITED STATES DISTRICT COURT
 7 FOR THE NORTHERN MARIANA ISLANDS**

8 **STEVEN PARKS,**) **CIVIL ACTION NO. 04-0013**
 9 **Plaintiff,**)
 10)
 11 **VS.**)
 12 **EDWARD CAMACHO, in his official and**) **DECLARATION OF**
 13 **personal capacities; DEPARTMENT OF**)
 14 **PUBLIC SAFETY, ELIAS SARALU,**)
 15 **and DOES 1-10,**) **DAVID LOCHABAY**
 16 **Defendants.**)
 17)
 18)

19 **COMES NOW DAVID LOCHABAY**, who would now declare as follows:

20 “My name is David Lochabay. I am over the age of majority and fully competent to execute this
 21 Declaration.

22 “I am a licensed attorney employed in the Office of the Attorney General of the Commonwealth
 23 of the Northern Mariana Islands, and have been so employed since September, 2003. As part of my
 24 duties, I represent the Defendants in the above styled and numbered cause.

25 “In this case, the hearing on Plaintiff’s Motion for Attorney Fees and Costs was held at 9:00 a.m.,
 26 Thursday, September 1, 2005. This hearing had been scheduled for some time. After scheduling, it was
 27 placed on the calendar which I keep in my computer, but, through inadvertence, not on my wall calendar.
 There is also a central office calendar on which the hearing date and time were entered.

28 “As the Court is well aware, a typhoon struck Saipan on August 31, 2005, the day before the
 hearing. I spent “typhoon day” doing all of the things one typically does before and during a typhoon,
 and my Thursday business calendar was not on my mind.

“On Thursday morning, September 1, 2005, I arrived at the office about 7:45 a.m. My computer

1 would not start. The staff member in charge of computers was not in the office. I obtained his telephone
2 number and called him. He was at home with no electricity and said he was not coming in until after
3 noon. I then obtained some screwdrivers and opened the case to my computer, hoping I might see
4 something obvious, such as a reset button on the motor. As I was quizzically looking at the inside of
5 the computer, it started. I reinstalled the case and checked my calendar. On it was the hearing on
6 attorney's fees. By this time, it was about 10:00 a.m. I immediately called the Court and spoke with Ms.
7 Faye Crozat. She informed me that Court was still in session. I informed her I would be right down.
8 I went home, put on a suit and tie, and drove to the court building. By the time I got there it was about
9 10:30 a.m. Court had concluded for the day. Judge Munson was gracious enough to allow me to explain
10 to him the reasons for missing the hearing, which I did. There was no discussion of the case on the
11 merits.

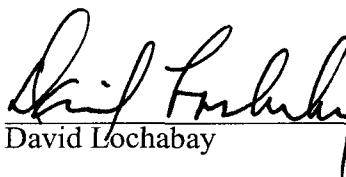
12 "I keep close watch on my calendar. I was well aware of the date and time for this hearing. With
13 the typhoon activities of the day before, I simply forgot.

14 "My clients deserve better that to have an award of attorneys fees and costs nearly 10 times the
15 size of the recovery in this case rendered against them without having participated in oral argument in
16 the only hearing of any kind held in this case.

17 "Further, Declarant saith not."

18 "I swear under penalty of perjury that the above and foregoing is true and correct, that I have
19 personal knowledge of the facts contained above, and that I execute this Declaration on the island of
20 Saipan, Commonwealth of the Northern Mariana Islands, this 6th day of September, 2005.

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David Lochabay